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ABSTRACT

This teacher's guide is designed to accompany the three-part videotape "Sentenced to Die." The videotape and teacher's guide should help students to: (1) understand the history of the Eighth Amendment; (2) examine the controversy surrounding the death penalty; (3) compare and contrast differing viewpoints on capital punishment; and (4) develop informed opinions about the death penalty. The videotape and teacher's guide provoke questions such as: Would a "mature" society prohibit the death penalty in all forms, or is capital punishment necessary for justice? Do courts convict citizens unfairly or allow criminals too many appeals? The guide contains four activities that involve class discussions and small-group work. Student handouts are provided. The active learning approach encourages students to go beyond recognition or knowledge of facts to begin analyzing, synthesizing, and evaluating the issues and concepts being studied. (LH)

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Sentenced to Die

Capital Punishment and the
Eighth Amendment

Teacher's Guide

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Sentenced to Die

Capital Punishment and the Eighth Amendment

Teacher's Guide

Developed by Mary Madden



Close Up Publishing



Close Up Foundation

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To the Teacher

Today, many Americans believe fighting crime should be the nation's top priority. In response to public demand, legislators have introduced and passed a variety of crime bills. Many of these laws at both the state and federal levels call for stronger punishments for crimes. Most citizens say they favor the death penalty for certain offenses and limiting appeals for death row prisoners. Others, however, believe that the death penalty violates the Eighth Amendment of the U.S. Constitution, which prohibits cruel and unusual punishment, and should not be part of a civilized society.

According to the Supreme Court, the Eighth Amendment of the Constitution "must draw its meaning from evolving standards of decency that mark the progress of a maturing society." Would a "mature" society prohibit the death penalty in all forms, or is capital punishment necessary for justice? Do courts convict citizens unfairly or allow criminals too many appeals? Close Up Publishing has developed this video to address these questions.

About the Video

Sentenced to Die is a three-part, thirty-five-minute videotape that explores the issue of capital punishment. Part I tells the story of Clarence Brandley, an African-American man in Conroe, Texas, who was wrongly convicted in 1980 of raping and killing a 16-year-old girl and sentenced to die. Clarence's brother, Ozell, petitioned the Reverend Jew Don Boney, who then organized grassroots community protests. In addition, independent investigator Jim McCloskey heard of Brandley's case, researched it, and worked to free Brandley. The investigative television show *60 Minutes* also reported on Brandley's situation. Following these efforts, Clarence Brandley was given a new trial. He was found not guilty and freed after ten years in prison.

Part II introduces viewers to Betty and Fred Romano, the parents of Dawn Garvin. In 1987, Garvin, a 20-year-old newlywed, was brutally raped and murdered in Baltimore County, Maryland, by Stephen Oken. Oken later killed his sister-in-law and a hotel clerk before being apprehended. Found guilty and sentenced to death in 1991, Oken was appealing his case for the fourth time at the time of this taping in 1995.

The final part of the video discusses the legal, constitutional, and moral issues concerning capital punishment. The video presents opinions from both sides.

About the Teacher's Guide

This guide is designed to help your students investigate and better understand the controversial issue of capital punishment. The guide has four activities, which should be used at different points in the lesson. Activity 1 should be conducted before students see *Sentenced to Die*. It provides them with historical background on capital punishment in the United States. Activity 2 will help students understand the issue while they are watching the video. Postviewing Activities 3 and 4 will further your students' understanding of capital punishment. The activities are as follows:

Activity 1: History of the Eighth Amendment

Activity 2: Viewing the Video

Activity 3: Understanding Arguments

Activity 4: Wrapping Up

These activities employ student handouts, which you can photocopy. The guide also provides you with additional suggestions for activities to enrich the lesson and help make this a successful and rewarding learning experience. You can use the teaching strategies and activities in the guide a variety of ways. Feel free to develop or adapt the activities to suit your teaching style, the needs of your students, and the amount of time you have to cover each topic.

Goals

This videotape and the teacher's guide should help students:

1. understand the history of the Eighth Amendment.
2. examine the controversy surrounding the death penalty.
3. compare and contrast differing viewpoints on capital punishment.
4. develop informed opinions about capital punishment.

Student Activities

The activities are designed to provide a variety of educational experiences for your students. Rather than following a traditional lecture format, these activities call for class discussions and small-group work. This active learning approach encourages students to go beyond mere recognition or knowledge of the facts to begin analyzing, synthesizing, and evaluating the issues and concepts under study.

Tips on Leading Effective Class Discussions

All of the activities in this guide include some class discussion. Following these procedures will increase the effectiveness of your discussions.

- Structure class discussions to involve the entire class; avoid creating a dialogue between the teacher and a few students. Make a special point of encouraging students to speak directly to one another rather than to you.

- Sequence your questions from those that require simple factual recall to those that demand more complex analysis. Use Bloom's Taxonomy to help you develop your questions. Questions that ask students to list or identify are useful because they promote class participation and allow students to answer questions correctly. But such questions do not provoke analysis. A factual recall question such as "Who proposed the Bill of Rights to the first Congress?" should be followed by a more thought-provoking question like, "Why was the Bill of Rights added to the Constitution?"
- Incorporate "wait time" into your discussion periods. You should wait for all students to respond to a question; if students cannot respond successfully, rephrase the question and try again.

Tips on Conducting Small-Group Work

Small-group work is an important part of many of the activities in this guide. Stress the need for students to listen, to solicit opinions from all group members, to focus on issues rather than on personalities, to focus on the assigned topic and task, to resolve conflicts, to move the discussion along, and to discuss the responses of other students.

Indicate to students that they should work to guarantee that everyone in their group participates. After the activity, conduct an examination of each group's participation so that students understand that their ability to work together is as important as the conclusions they reach.

Activity 1

History of the Eighth Amendment

Objectives

After completing this activity, students will be able to:

1. summarize the history of the Eighth Amendment.
2. identify arguments on both sides of the capital punishment debate.
3. explain the relationship between the Constitution and the death penalty.

Procedures

1. To get students thinking about crime and punishment, engage them in a brainstorming activity. Ask what strategies and tactics have been suggested or implemented to combat crime. Write responses on the board. Divide student responses into legal, social, and economic categories. Which tactics do students believe are the most effective? Which are the least effective?
2. Next, introduce the lesson on capital punishment and the video *Sentenced to Die* by writing the Eighth Amendment on the board:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Ask students what they think the amendment means literally. What does the amendment mean to students personally? How do they define "cruel and unusual" punishment? For example, in 1791, public floggings and cutting off ears were acceptable punishments for crimes. Do your students believe that these early American punishments are cruel and unusual by today's standards? What would be cruel and unusual punishment for driving under the influence of alcohol? For killing another person? Conclude the discussion by informing the class that they are beginning a lesson on capital punishment. Remind students that many people have strong opinions about this issue and that all opinions should be respected. It is difficult to come to a consensus on capital punishment in the United States, and your classroom may mirror that division.

3. Next, distribute **Student Handout 1—History of the Eighth Amendment**, and have the class read the handout. After students have finished reading, ask them to work with a partner for ten to fifteen minutes to answer the questions at the end of the handout. Then, lead a class discussion based on their responses. While discussing the handout, you may wish to review the key terms that have been included.
4. Conclude by telling students that they are soon going to watch a video about capital punishment. They should keep in mind information they learned in this activity while they are watching the video.

Additional Suggestions

1. Ask students—by a show of hands—how many favor stronger punishment for convicted criminals. Then, tell your students about a man who was was branded with a cross on his forehead and had his forearm amputated as punishment for a crime. Ask students to speculate on the man's crime and when and where the crime took place. The man—a convicted burglar—had stolen a television set in 1995; he lived in Iraq. Iraq's laws allow officials to cut off limbs of criminals to deter others from stealing. Do students believe that stronger punishments, like those found in Iraq or Singapore, where whipping is allowed, would deter crime in the United States? Do students favor stronger and swifter punishments?
2. Have students research and write a report on how the legal systems in other countries punish convicted criminals. How do citizens of these countries react to these punishments? You may want to encourage students to focus on countries such as France, Great Britain, Israel, Japan, Russia, Saudi Arabia, and Singapore. Ask students to read their reports in class.

Activity 2

Viewing the Video

Objectives

After completing this activity, students will be able to:

1. identify various perspectives in the capital punishment debate.
2. compare and contrast different views on the death penalty.
3. understand the emotions surrounding the death penalty.

Procedures

1. Before showing the video, distribute copies of **Student Handout 2—The Death Penalty: Justice or Cruel and Unusual Punishment?** Tell your students that the quotes on this handout have been taken from the videotape and are representative of views expressed by individuals who appear in the video. Give students five to ten minutes to complete the handout. Then, review their responses in a class discussion. Encourage students who have opposing opinions to explain their positions. Discuss each quote and average the score for each item to get an idea of where the class stands. Write the averages on the board. Urge students to listen for the quotes while they are watching.

Note to teacher: During the course of the lesson you may want to tell your class the names of the speakers of the quotes on the handout. They are: (1) Betty Romano—Dawn Garvin's mother; (2) David Price—Washington Legal Foundation; (3 and 4) Diann Rust-Tierney—American Civil Liberties Union; (5) David Price—Washington Legal Foundation; (6) Jim McCloskey—Centurion Ministries; (7) Lieutenant Sam Bowerman—Baltimore County Police Department; (8) Mike DeGeurin—Clarence Brandley's lawyer; (9) Ozell Brandley—Clarence Brandley's brother; and (10) Fred Romano—Dawn Garvin's father.

2. Next, distribute **Student Handout 3—Varying Viewpoints**. Make sure students are clear about what they are supposed to do with the handout. Tell them that after they view the tape, they will discuss their impressions of the video and the viewpoints of each speaker. (You might want to stop the video as each speaker first appears, so students know who is who.) Then, **show the video**.
3. After students have seen the video, allow them a few minutes to complete the handout. To ensure their candid reactions, you can tell students that these handouts will be used only for discussion and will not be handed in. Then, discuss what class members have written on their handouts. What were the viewpoints of these people? Which of them were basically on the same side? What were the students' impressions of each of the speakers? It might be helpful to show the discussion of the Brandley and Romano cases again before you discuss the speakers' conflicting views on capital punishment.
4. To extend the discussion about the role of race in capital punishment, you might want to call attention to the last part of the videotape, where David Price of the Washington Legal Foundation and Diann Rust-Tierney of the ACLU seem to disagree on this issue. Rust-

Tierney says that African Americans are more likely than Caucasian Americans to be on death row. Price says that Caucasian defendants are slightly more likely than African-American defendants to be executed. According to statistics, both are correct. You may wish to clarify by writing the following information on the board:

- 3,009 people were on death row in April 1995.
- In 1995, 40 percent of all death row inmates were African Americans.
- According to the 1990 census, African Americans make up 12.3 percent of the U.S. population.
- Between 1977 and 1993, 5.1 percent of all Caucasian death row inmates were executed.
- Between 1977 and 1993, 4.6 percent of all African-American death row inmates were executed.

(Statistics are from the U.S. Department of Justice Bureau of Justice Statistics and the U.S. Census Bureau.)

Discuss with students the role of statistics in the death penalty debate. How can both speakers' statements be correct? Which speaker were students more inclined to believe? Why?

Additional Suggestions

1. Ask students if they can define the terms mitigating and aggravating circumstances. Aggravating circumstances are factors that make a *crime more serious*, such as sexual assault or kidnapping in addition to a murder. Mitigating circumstances are factors that make a *crime less serious*, such as a defendant's status as a minor or a defendant's mental retardation.

After both terms have been clearly defined, students, working in pairs, should identify potential aggravating circumstances and mitigating circumstances in the case of Stephen Oken or some other capital case with which they might be familiar. What aggravating and/or mitigating circumstances did they identify? Would these circumstances have made any difference to the students if they had been on the jury in any of these trials?

2. Americans supporting and opposing capital punishment have created organizations to inform citizens of where they stand and why. They distribute publications and pamphlets that focus on their mission. Have interested students gather such information and share it with the class. Write the following addresses and telephone numbers on the board to help them obtain information:

National Coalition to Abolish the Death Penalty
918 F Street, N.W.
Suite 601
Washington, DC 20004
202-347-2411

Washington Legal Foundation
2009 Massachusetts Avenue, N.W.
Washington, DC 20036
202-588-0302

After students gather information, lead a discussion about the way the material was presented by each organization. How did the groups highlight information that represents their point of view? Discuss why groups such as these exist.

Activity 3

Understanding Arguments

Objectives

After completing this activity, students will be able to:

1. identify key arguments from the concurring and dissenting opinions in *Callins v. Collins* (1994).
2. evaluate the strengths and weaknesses of all positions in capital punishment debates.

Procedures

1. Introduce the case of *Callins v. Collins* (1994). Explain that Edwin Callins was convicted of killing a person while he was robbing a bar. He received the death penalty for his crime. Distribute **Student Handout 4—Case Study: Callins v. Collins (1994)**. Students can take turns reading this case study aloud or individually. Then, ask class members, working in pairs, to answer the questions at the bottom of the handout. When all have finished, proceed through each question. With which Supreme Court justice do they agree? Point out that even the leading judges in the United States have differing opinions on issues like capital punishment.
2. Next, organize debates. Divide your class into several teams that will debate issues surrounding capital punishment from opposite sides. Organize as many debates as manageable, in a way that works well for your situation. Choose from the following debate topics:
 - Capital punishment should be banned because a disproportionate number of minorities are executed.
 - The number of appeals by convicts on death row should be reduced because the appeals process is too time-consuming and costly.
 - The death penalty is a deterrent to crime and should be maintained.
 - The death penalty has no place in a modern and civilized nation like the United States.

Give students time to research topics. You may want to appoint a panel of judges for each debate, or allow the whole class to judge the "winner." After each debate, ask the class which side they thought was most persuasive and why. Discuss the strongest arguments made by each side.

Were students swayed by emotional appeals or by arguments based on facts? Did the arguments change anyone's opinion or attitude toward the death penalty? Point out that while the Supreme Court has made decisions about capital punishment, Americans continue to express conflicting opinions about it.

3. Have students speculate why Americans do not agree about capital punishment. What view would the majority of people in their community hold? Why do students think so? Then, distribute copies of **Student Handout 5—Community Poll**. Ask each student to poll five

people in his or her school, home, or community. After students compile results, they should compare the answers to their earlier assumptions. Students might want to submit a story to the school or local newspaper, explaining their survey and its findings and offering possible conclusions.

Additional Suggestions

1. Urge students to read the opinion and editorial pages of local or national newspapers. They should look for essays that espouse differing opinions on any topic. Common topics for editorial writers are abortion rights, gun control, school reform, and immigration. You may ask students to bring in the articles, explain the issue to the class, and present the differing opinions.
2. Tell students to imagine themselves in the role of a Supreme Court justice. Read each of the following actual court cases aloud in class and ask students how they would have ruled. You may ask your students to write out their responses, explaining their verdict in these two cases, or you may want to discuss them orally.
 - *Romano v. Oklahoma* (1994). In this case, jurors sentenced the defendant, John Romano, to die. However, the jurors had been told that Romano had already been sentenced to die for another murder. Romano's lawyer argued that since the jurors knew the defendant had already received a death sentence, they took their responsibility more lightly. Should the court order a new sentencing hearing?

Teacher's note: In a 5-4 ruling, the Supreme Court upheld the jury's verdict. Chief Justice William Rehnquist wrote that it was impossible to determine how this evidence affected the jury. Justice Ruth Bader Ginsberg believed that a new sentencing hearing should be ordered, since it was uncertain how the jury was affected by this evidence.

- *Simmons v. South Carolina* (1994). Jurors recommended the death penalty for Jonathan Dale Simmons, who was convicted of killing a woman. He had also pleaded guilty to other violent crimes. In the sentencing phase of the trial, jurors had been instructed by the judge to choose between life imprisonment and execution. However, they were not told that parole would be impossible for Jonathan Simmons if they ordered life imprisonment. Simmons was sentenced to death. In an appeal, Simmons' lawyer argued that jurors might have imposed the death sentence to make sure Simmons was not going to be paroled in the future. Should Simmons receive a new sentencing hearing?

Teacher's note: The Supreme Court voted, 7-2, that relevant information was withheld from the jury. The state may not withhold information that the defendant will never be eligible for parole. The defendant, however, must request that the jury be told that he or she will not be eligible for parole. Because this relevant information was withheld from the jury, Jonathan Dale Simmons was given a new sentencing hearing.

Activity 4

Wrapping Up

Objectives

After this activity, students will be able to:

1. state and defend their opinions on capital punishment.
2. understand that the United States is made up of people with many different opinions and attitudes.

Procedures

1. After you have shown the video and completed the appropriate activities, distribute new copies of **Student Handout 2—The Death Penalty: Justice or Cruel and Unusual Punishment?** Give students time to respond to the quotes a second time. Then, discuss each quote briefly and average the scores as you did in Activity 1. Were there any changes from the first time? Which scores reflect the most change? Which scores reflect the least change? Were students' opinions affected by the video? If so, what caused their opinions to change?
2. Inform your students that from 1973 to 1993, forty-three defendants sentenced to death were later acquitted, pardoned, or had charges against them dropped. Professors Michael Radelet and Hugh Bedau argue in their book *In Spite of Innocence* that at least twenty-three defendants from 1973 to 1993 were executed before their innocence could be proven.

The forty-three persons condemned and later found innocent from 1973 to 1993 represent about 1 percent of all death penalty convictions during that time. Do students believe that 1 percent is an acceptable margin of error in death penalty cases? Why or why not?

Next, spend some time talking to your students about their overall impressions of what they have just seen in the video. Students may feel sympathy for both Clarence Brandley and Dawn Garvin's parents. You may wish to point out that the appeals process that kept Clarence Brandley alive until his innocence was proven is the same system that Betty and Fred Romano resent.

Encourage students with different viewpoints to express their perspectives. Ask them if they have gained any insight into cruel and unusual punishment, the Eighth Amendment, and the death penalty.

Additional Suggestions

1. Write a one-sided statement about the death penalty on the board, such as: "The death penalty is an effective tool to combat crime and should be imposed for all convicted murderers" or "Imposing the death penalty makes society no better than the criminals who are being punished."

Then, divide your class into four groups—strongly agree, agree, disagree, and strongly disagree. Allow students to move to the group that most closely represents their own opinion. The students in each group will then have five minutes to come up with arguments supporting their position. Each group should explain their views to the class. After all groups have reported, ask students if they want to move to a different group based upon what they have just heard.

2. Have students write letters favoring or opposing the death penalty to the editor of a newspaper. Encourage students to propose solutions to the problems raised by the death penalty. For example, if a student is in favor of capital punishment, how can it be administered more equitably? How should the justice system respond to the concerns about innocent defendants on death row? On the other hand, if a student is against capital punishment, how then should violent criminals be punished? You may want to submit the letters to your local or school newspaper.

Student Handout 1

History of the Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Before the Eighth Amendment. The language of the Eighth Amendment came almost word for word from the Virginia Declaration of Rights of 1776, which itself was virtually identical to a provision in the English Bill of Rights of 1689. Even before these documents, however, the Massachusetts Body of Liberties, enacted in 1641, provided a right to bail and prohibited cruel and inhuman punishments.

The Massachusetts Bay Colony, founded by Puritans, sought to eliminate such English punishments as whippings of more than forty lashes, cutting off hands, and burning at the stake. The Body of Liberties allowed the death penalty for religious offenses, such as blasphemy, but not for burglary and robbery—which were capital crimes in England.

Nonetheless, the Puritans allowed many punishments that might seem “cruel and unusual” today. Physical punishments included piercing of the tongue with a hot iron, cutting off ears, branding, and whipping. The Puritans also shamed offenders by public punishment, in which lawbreakers were confined to the stocks and pillory while townspeople hurled garbage at them. The ultimate punishment, besides hanging, was banishment from the colony.

Following the example of the Massachusetts Body of Liberties and the Virginia Declaration of Rights, four states proposed that some version of what eventually became the Eighth Amendment be included in the Bill of Rights, which was ratified in 1791. In its final version, the Eighth Amendment prohibited three things: excessive bail, excessive fines, and cruel and unusual punishment. But as the history of the Eighth Amendment demonstrates, Americans’ definition of “cruel and unusual” has been an evolving one.

Cruel and Unusual Punishment. The final clause of the Eighth Amendment forbids punishments that are “cruel and unusual,” but it does not say what those punishments are. The Supreme Court in *Trop v. Dulles* (1958) said that the Eighth Amendment “must draw its meaning from evolving standards of decency that mark the progress of a maturing society.” Therefore, as Justice Thurgood Marshall noted in a later case, “a penalty that was permissible at one time in our nation’s history is not necessarily permissible today.” Thus, common punishments in 1791 such as whippings and pillories are not constitutional today.

But although other forms of bodily punishment for criminals have disappeared, the death penalty remains a controversial issue. The Supreme Court has decided many cases on the constitutionality of capital punishment. It has also defined the nature of cruel and unusual punishments in noncapital cases. But the death penalty remains the most debated issue under the Eighth Amendment, probably because it concerns the ultimate issue: life or death.

Capital Punishment. The death penalty has been an established feature of the American criminal justice system since colonial times. In fact, until the mid-nineteenth century, the death penalty was the automatic sentence for a convicted murderer. State laws began to draw distinctions between degrees of murder, but the death penalty was still automatic for first-degree murderers. By the early twentieth century, however, state legislatures had given jurors more discretion in sentencing, but jurors were given no guidance by state law in choosing between life and death sentences. Jurors had total discretion in this decision that could not be reviewed upon appeal.

Murderers and rapists were executed quite frequently in the United States until the 1960s, with the rate of execution peaking at 200 per year during the Great Depression. But in the 1960s, the death penalty faced increased opposition. Some social scientists argued that the death penalty did not achieve its major purpose—deterrence of other murderers. Studies of execution patterns also indicated that juries did not treat like cases alike, instead acting randomly and unreasonably. Furthermore, where there was a pattern to death penalty sentencing, it was based on race. Black people were executed far more often than white people for murder, and almost all those executed for rape were black men convicted of raping white women. In 1972, these factors led the Supreme Court to reconsider whether the death penalty was “cruel and unusual punishment” in the case of *Furman v. Georgia*.

Furman v. Georgia (1972). In *Furman*, the Court ruled that the death penalty as then administered in the United States was cruel and unusual punishment because it was "wantonly" and "freakishly" imposed. Judges and juries had far too much unguided discretion under current state laws, the Court held, leading to "arbitrary and capricious," or random and unreasonable, death sentences.

In *Furman*, the Supreme Court did not rule that the death penalty was unconstitutional in all circumstances. Rather, the Court held that the states, to prevent discriminatory use of the death penalty, had to give judges and juries more guidance in capital sentencing. Executions across the country were suspended as a result. In response, about three-fourths of the states and the federal government passed new death penalty laws. While reviewing these laws in 1976, the Supreme Court in *Gregg v. Georgia* finally decided whether the death penalty was inherently "cruel and unusual" punishment.

Upholding the Death Penalty. In *Gregg v. Georgia* (1976), the Supreme Court held that "the punishment of death does not invariably violate the Constitution." The Court noted that three-fourths of state legislatures reenacted the death penalty after *Furman*; therefore, the death penalty was not "unusual" punishment.

The Court upheld the Georgia law at issue in *Gregg* because it helped limit the discretion of the judge and jury by giving them guidance. The Georgia law divided a capital trial into two parts: the guilt phase and the sentencing phase. In the guilt phase, the judge or jury decided whether or not the accused was in fact guilty of the crime. In the sentencing phase, the judge or jury decided whether to condemn the convicted defendant to death based on two criteria set forth in the law: aggravating circumstances, which made the crime more serious, and mitigating circumstances, which lessened the seriousness of the crime. One aggravating circumstance, for example, was that the murder "was outrageously and wantonly vile, horrible, and inhumane." Among the mitigating circumstances were the background and character of the defendant. Many states now have death penalty laws following the Georgia model.

In dissent, Justice William Brennan questioned "whether a society for which the dignity of the individual is the supreme value can, without a fundamental inconsistency, follow the practice of deliberately putting some of its members to death." "Even the vilest criminal," said Brennan, "remains a human being possessed of common human dignity."

When is a Death Sentence Really Final? Since the Supreme Court reinstated the death penalty in *Gregg*, only 287 of the approximately 3,000 prisoners on death row since 1976 had been executed as of April 1995. One reason for the small percentage of executions is the number of court appeals that are made in death penalty cases. Because death is the final and ultimate punishment, the Supreme Court has ruled that "death is different" and required stronger procedural protections in death penalty cases than in noncapital crimes. Therefore, appeals are more common in capital cases.

Most capital cases originate in the states and can be appealed directly through the state court system. But in addition, defendants make indirect, or collateral, appeals of their sentences through the federal court system by arguing that their constitutional rights have been violated. These federal appeals, known as petitions for the writ of habeas corpus, can last many years, long after state appeals have been exhausted.

In 1991, the Supreme Court limited the number of federal habeas corpus appeals that can be filed by death row prisoners. Supporters of the Court's decision claimed the death penalty had been losing its deterrent effect because the drawn-out appeals process created too much time between sentencing and execution. Critics of the decision argued that the Court was denying constitutional rights to those who needed them most, death row inmates—some of whom could be innocent.

Excerpted from *The Bill of Rights: A User's Guide*, second edition, © 1995 Close Up Foundation.

Key Terms

- capital crime—a crime that is punishable by death
- noncapital crime—a crime that is not punishable by death
- capital punishment—penalty of death for a crime
- writ of habeas corpus—a court order requiring that an officer who has custody of a prisoner show cause why the prisoner should not be released; designed to prevent unlawful imprisonments
- aggravating circumstances—factors that make a crime more serious
- mitigating circumstances—factors that make a crime less serious
- appeal—a request that a higher court review a case

After you have finished reading the history of the Eighth Amendment, answer the following questions in complete sentences.

1. Explain the origin of the Eighth Amendment. What punishments were considered cruel and unusual in colonial times?
2. Why are some punishments that were permissible in past eras considered unconstitutional today?
3. Summarize the ramifications of the *Furman* case on the legal system. What was the Supreme Court's justification of its ruling in this case?
4. Identify two arguments for and two arguments against the death penalty.
5. Are federal habeas corpus appeals necessary in death penalty cases? Why or why not?

Student Handout 2

The Death Penalty: Justice or Cruel and Unusual Punishment?

Read each quote carefully and circle the number that comes closest to your level of agreement.

	<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Agree</i>	<i>Strongly Agree</i>
1. In the death penalty case, we've been told [there are up to] fourteen years of appeals. So really, we've only been through . . . four and a half years of appeals of fourteen years. We've got a long time to go. That's not right, that's not fair. My daughter didn't get to live that long. He [convicted murderer Steven Oken] has no right to still be breathing.	1	2	3	4
2. A white defendant is slightly more likely than a black defendant to be sentenced to death and . . . a white defendant is slightly more likely to be executed than a black defendant.	1	2	3	4
3. The most significant factors in determining who will get a death penalty and who won't are race, poverty, and whether you're unlucky enough to get a lousy lawyer. That's who ends up on death row; people of color, people whose victims are white, and people with lawyers none of us would even want in traffic court.	1	2	3	4
4. There's no evidence that the death penalty deters crime. States like Texas lead the nation in executions. But states like Texas also have some of the highest homicide rates in the country.	1	2	3	4
5. The fact is that a state with a high crime rate to begin with is one which is most likely to react to that by adopting capital punishment.	1	2	3	4
6. The death penalty sends the message that it's an eye for an eye. Vengeance. Blood for blood. And I just think that's an uncivilized barbaric ethic that belongs in millennium past.	1	2	3	4
7. The most sacred right that we, each and every one of us, have is the right to life. When someone takes that life, they should suffer the ultimate price and that's the actual sacrifice of their life.	1	2	3	4
8. [T]he decision whether or not to seek the death penalty is freakishly determined. And it's based on a prosecutor here, a prosecutor there, politics here, politics there. . . .	1	2	3	4
9. We certainly feel like if he was a white person, certainly Clarence Brandley would be free today.	1	2	3	4
10. I wish he [Stephen Oken] would've come out with a gun in his hand [as police surrounded his hotel room]. . . . I don't care if people think it's vengeance. That's okay. For what he did, justice would have been served with some vengeance.	1	2	3	4

Student Handout 3

Varying Viewpoints

As you watch the video, pay careful attention to the opinions being expressed. How does a person's involvement in the death penalty debate influence his or her views? Which speaker do you most empathize with? Why? As you watch the video, write down the necessary information in the space provided.

<i>Speakers</i>	<i>Main arguments for/against capital punishment</i>	<i>Your impressions of the speaker and of his or her opinion</i>
Clarence Brandley acquitted defendant		
Mike DeGeurin Brandley's lawyer		
Betty and Fred Romano victim's parents		
Lt. Sam Bowerman Baltimore County Police		
Diann Rust-Tierney ACLU		
David Price Washington Legal Foundation		

Student Handout 4

Case Study: *Callins v. Collins* (1994)

Edwin Callins was convicted of first degree murder by a Texas jury for killing a patron while robbing a bar. For this, Callins received the death penalty. Callins appealed to the U.S. Supreme Court, but the Court declined to review his case. Justice Harry Blackmun disagreed with the Supreme Court's decision to deny the review. Below is Blackmun's opinion, followed by Justice Antonin Scalia's response. Read each excerpt carefully to find the arguments for each position.

JUSTICE BLACKMUN, dissenting from the Court's decision not to review the case

... Bruce Edwin Callins will be executed [tomorrow] by the state of Texas. Intravenous tubes attached to his arms will carry the instrument of death, a toxic fluid designed specifically for the purpose of killing human beings. The witnesses ... will behold Callins ... strapped to a gurney, and seconds away from extinction.

Within days, or perhaps hours, the memory of Callins will begin to fade. The wheels of justice will churn again, and somewhere, another jury or another judge will have the unenviable task of determining whether some human being is to live or die.

We hope ... that the defendant whose life is at risk will be represented by some competent counsel ... and appear before a judge who is still committed to the protection of defendants' rights even now, as the prospect of meaningful judicial oversight has diminished. In the same vein, we hope the prosecution, in urging the penalty of death, will have exercised its discretion wisely, free from bias, prejudice or political motive, and will be humbled, rather than emboldened, by the awesome authority conferred by the State.

But even if we can feel confident that these actors will fulfill their roles to the best of their human ability, our collective conscience will remain uneasy. Twenty years have passed since this Court declared that the death penalty must be imposed fairly, and with reasonable consistency or not at all and, despite the effort of the states and courts to devise legal formulas and procedural rules to meet this daunting challenge, the death penalty remains fraught with arbitrariness, discrimination, caprice, and mistake.

To be fair, a capital sentencing scheme must treat each person convicted of a capital offense with the "degree of respect due the uniqueness of the individual." ... That means affording the sentencer the power and discretion to grant mercy in a particular case and providing avenues for the consideration of any and all relevant mitigating evidence that would justify a sentence less than death.

Reasonable consistency, on the other hand, requires that the death penalty be inflicted evenhandedly, in accordance with reason and objective standards, rather than by whim, caprice, or prejudice.

Finally, because human error is inevitable and because our criminal justice system is less than perfect, searching appellate review of death sentences and their underlying convictions is a prerequisite to a constitutional death penalty scheme.

... [F]rom this day forward, I no longer shall tinker with the machinery of death. For more than twenty years I have ... struggled ... to develop procedural and substantive rules that would lend more than the appearance of fairness to the death penalty endeavor. ... I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident to me that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question—does the system accurately and consistently determine which defendants "deserve" to die?—cannot be answered in the affirmative. ... The problem is that the inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution.

JUSTICE SCALIA, concurring with the Court's decision not to review the case

Justice Blackmun dissents from the denial of certiorari in this case with a statement explaining why the death penalty "as currently administered," is contrary to the Constitution of the United States. That explanation often refers to "intellectual, moral, and personal" perceptions, but never to the text and tradition of the Constitution. It is the latter rather than the former that ought to control. The Fifth Amendment provides that "[n]o person shall be held to answer for a capital . . . crime, unless on a presentment or indictment of a Grand Jury, . . . nor be deprived of life . . . without due process of law." This clearly permits the death penalty to be imposed, and established beyond doubt that the death penalty is not one of the "cruel and unusual punishments" prohibited by the Eighth Amendment.

As Justice Blackmun describes, however, over the years since 1972 this Court has attached to the imposition of the death penalty two quite incompatible sets of commands: the sentencer's discretion to impose death must be closely confined, but the sentencer's discretion not to impose death (to extend mercy) must be unlimited. . . .

[C]onvictions in opposition to the death penalty are often passionate and deeply held. That would be no excuse for reading them into a Constitution that does not contain them, even if they represented the convictions of a majority of Americans. Much less is there any excuse for using that course to thrust a minority's views upon the people.

Justice Blackmun begins his statement by describing with poignancy the death of a convicted murderer by lethal injection. He chooses, as the case in which to make that statement, one of the less brutal of the murders that regularly come before us, the murder of a man ripped by a bullet suddenly and unexpectedly, with no opportunity to prepare himself and his affairs, and left to bleed to death on the floor of a tavern. The death by injection which Justice Blackmun describes looks pretty desirable next to that.

It looks even better next to some of the other cases currently before us which Justice Blackmun did not select as the vehicle for his announcement that the death penalty is always unconstitutional, for example, the case of the 11-year-old girl raped by four men and then killed by stuffing her panties down her throat. . . . How enviable a quiet death by lethal injection compared with that!

If the people conclude that such more brutal deaths may be deterred by capital punishment; indeed, if they merely conclude that justice requires such brutal deaths to be avenged by capital punishment; the creation of false, untextual and unhistorical contradictions within "the Court's Eighth Amendment jurisprudence" should not prevent them.

After reading the above text, answer each question.

1. According to Justice Blackmun, what responsibilities do defense lawyers, prosecutors, and judges have in death penalty cases?
2. How does Justice Blackmun say the death penalty must be carried out?
3. Why does Justice Blackmun believe that the death penalty experiment has failed?
4. On what constitutional grounds does Justice Scalia disagree with Justice Blackmun over the death penalty?
5. Identify two arguments that Justice Scalia employs for using the death penalty.

Student Handout 5

Community Poll

Ask five people in your school, home, or community to respond to each of the statements below. Label your respondents with a letter A to E and record their responses in the appropriate space in each box.

1. Capital punishment deters violent crime.

A
B
C
D
E

2. Capital punishment is cruel and unusual punishment.

A
B
C
D
E

3. The appeals process in death penalty cases is too long.

A
B
C
D
E

4. The judicial system administers the death penalty equitably and fairly.

A
B
C
D
E

5. Defendants in death penalty cases receive unfair trials.

A
B
C
D
E

6. Innocent people have been wrongly sentenced to death.

A
B
C
D
E

<i>Agree</i>	<i>Disagree</i>

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